

RESOLUTION OF THE BOSTON REDEVELOPMENT AUTHORITY RE:  
LEASEHOLD AGREEMENT WITH CHARLES RIVER PARK, INC.,  
WEST END PROJECT UR MASS. 2-3

WHEREAS, the Boston Redevelopment Authority, a public body politic and corporate created pursuant to Massachusetts General Laws (Ter. Ed.) Chapter 12, Section QQ, and Charles River Park, Inc., executed a "Leasehold Agreement" for the West End Land Assembly and Redevelopment Project, dated March 2, 1960, with respect to Delivery Parcels 1A, 1B, 1C, 1D, 1D1, 1E, 1F and 1G within said Project; and

WHEREAS, in accordance with the terms of said "Leasehold Agreement", Charles River Park, Inc., has, at its election, accepted delivery of Parcels 1A, 1B, 1C, 1D, 1D1 and 1G, by purchase of the fee title in said parcels or by lease; and

WHEREAS, Section 204(e) of said Leasehold Agreement recites: "It is understood by the parties hereto that they shall make their best efforts toward speeding the schedule of commencement of the several lease terms, as circumstances permit, in order to achieve an early completion of the Project"; and

WHEREAS, Charles River Park, Inc., had the obligation to accept delivery of Parcels 1E and 1F in accordance with the schedule for the commencement of their respective lease terms, which schedule set March 7, 1965, and March 7, 1964, respectively as the dates for the delivery of the said parcels; and

WHEREAS, the Board on June 20th, 1968, voted to include parcel 2 with parcels 1E and 1F for development by Charles River Park, Inc., in accordance with the Leasehold Agreement; and

WHEREAS, Charles River Park, Inc. has failed to carry out its duties and obligations under the Leasehold Agreement, as the same may have been amended, by accepting delivery of the parcels in question, by submitting general plans and specifications for review by the Boston Redevelopment Authority and by using its best efforts toward "speeding the schedule of commencement of the several lease terms":

NOW THEREFORE, BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY:

1. That the Director is hereby authorized and directed to serve formal notice on Charles River Park, Inc., that, pursuant to Section 701 of the Leasehold Agreement, Charles River Park, Inc. has breached the Leasehold Agreement and that if said breach is not cured within 60 days of said notice, then the Authority proposes to retain the security deposit as liquidated damages and to consider the Leasehold Agreement as null and void.

2. That in the event Charles River Park contests the finding of the Board that it has breached the Leasehold Agreement, the Director is authorized and empowered to defend such legal proceedings as he may deem necessary in the name of and on behalf of the Authority to protect the position of the Authority as set forth in the preceding resolution and to take any other actions not inconsistent with the terms of said resolution as he may deem necessary.

MEMORANDUM

14

June 4, 1970

1646

TO: Boston Redevelopment Authority

FROM: John D. Warner, Director

SUBJECT: West End

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Attached is a recommended resolution authorizing notice of breach to Charles River Park Inc. (CRP) of the Leasehold Agreement between it and the Authority.

The summary facts are:

CRP was scheduled to accept delivery of Parcels 1E and 1F (Parcel 2 was later added) in 1964 and 1965. The parcels have not been delivered or accepted to date.

CRP has never been notified that it has breached the Leasehold Agreement between it and the BRA. Until such notice is given, breach by CRP is not legally effective and CRP has 60 days after any such notice to cure its breach.

CRP has made various submissions of plans for building on the parcels. The most recent submission was conditionally approved by the BRA as "preliminary plans", subject to design review of final plans which have not been submitted.

The question whether the BRA or CRP, or neither, is at fault for causing the delay is hotly disputed.

The recommended resolution gives CRP notice of default. It reaffirms the BRA's readiness to proceed under the agreement, even at the old price per square foot (\$1.35).

The reasons for the recommended resolution are:

Until notice of default is given - and 60 days has elapsed without cure - the BRA cannot disregard the Leasehold Agreement. Since CRP does not appear to be ready to go forward, matters will remain on dead center until notice is served.

Unilateral rescission is not advisable. If the BRA were to proceed unilaterally without having given the required notice, the likely result is extended litigation, ending in a finding that the Board had acted prematurely, and the matter would then be at rest where it started.

The resolution is designed to avoid, as unnecessary at this time, any question concerning the effect of the Board's action on June 20, 1968, which tentatively and conditionally approved CRP's plans. The burden of curing breach is on the redeveloper and it is not necessary for the Board, unless it should so choose, to specify the manner in which the redeveloper must perform.

The notice will restate the Authority's readiness to deliver the parcels in accordance with the Agreement - i.e. on the basis of approved plans - and will notify CRP that failure by it to take affirmative action during the 60-day period will be treated as an additional act of breach.

The recommended resolution is designed to move the proceeding forward in the least complicated manner possible - to put the redeveloper to the test whether it will or will not proceed in good faith to develop the parcels in question.

